



PENNSYLVANIA
society of
ANESTHESIOLOGISTS

March 25, 2024

Hon. Dan Frankel
Majority Chair, House Health Committee
326 Main Capitol Bldg.
PO Box 202023
Harrisburg, PA 17120-2023

Hon. Kathy Rapp
Minority Chair, House Health Committee
312 Main Capitol
PO Box 202065
Harrisburg, PA 17120-2065

Dear Chairman,

On behalf of the Pennsylvania Society of Anesthesiologists (PSA), representing nearly 2,000 anesthesiologists throughout the Commonwealth, I write in strong support of House Bill 1633.

Increasingly non-compete covenants are used by corporations to the disadvantage of both patients and physicians. Non-compete covenants limit provider autonomy and provide undue leverage to profit-driven employers over the practice of medicine. They can be, and are, used to interfere with a physician's professional judgement and fiduciary relationship to their patient. When healthcare providers are bound by non-compete covenants, they are prevented from seeking better practice opportunities, more responsible healthcare systems, and may even be forced to leave Pennsylvania.

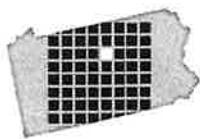
On the patient side, non-compete covenants disrupt continuity of care and contribute to the healthcare provider shortage. Patients who are affected by non-compete agreements face longer wait times, travel farther distances, or even forego necessary care due to limited provider options imposed by non-compete clauses.

House Bill 1633 renders non-compete covenants for healthcare practitioners unenforceable in the Commonwealth. The legislation does not prohibit employers from recovering reasonable expenses directly attributable to the healthcare practitioner.

I urge your support of House Bill 1633 and the significant benefit it would bring to healthcare providers and patients. By removing the enforcement of non-competes, HB 1633 would allow providers to practice medicine with greater autonomy and better serve the citizens of Pennsylvania. By enabling practitioners to freely pursue employment opportunities and serve communities in need, we can enhance access to quality care.

Sincerely,

Gordon Morewood, MD, MBA, FASE, FASA
President
Pennsylvania Society of Anesthesiologists



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of EMERGENCY PHYSICIANS**

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Executive Director

March 26, 2024

Hon. Dan Frankel
326 Main Capitol Building
P.O. Box 202023
Harrisburg, PA 17120-2023

Hon. Kathy L. Rapp
312 Main Capitol Building
P.O. Box 202065
Harrisburg, PA 17120-2065

Dear Chairman Frankel and Chairwoman Rapp:

On behalf of Pennsylvania's Emergency Physicians, I am writing to urge you to report HB 1633 from the House Health Committee when you meet on Wednesday, March 27. This legislation is necessary to bring balance to the Commonwealth's healthcare workforce as physicians and other healthcare professionals seek opportunities to apply their skill and training to benefit patients.

The Pennsylvania College of Emergency Physicians (PACEP) understands an amendment will be offered at Wednesday's meeting. We are studying its full implications. We know, however, that the underlying issue of non-compete agreements is greatly important, and we request that HB 1633 be reported from the Health Committee without delay.

Thank you for your consideration of PACEP's views on this essential issue.

Sincerely,

Richard J. Hamilton, MD, MBA, FACEP
President
Pennsylvania College of Emergency Physicians



Pennsylvania
MEDICAL SOCIETY

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Wednesday, March 20, 2024

On behalf of the physician members of the Pennsylvania Medical Society (PAMED), I am writing to request your qualified support of House Bill 1633, introduced by Representative Dan Frankel. PAMED applauds Representative Frankel for introducing this bill that would help address physician shortage concerns and ensure continuity of care for patients across the Commonwealth. Restrictive covenants, also known as non-compete agreements, prohibit a former employee from competing against their former employer within a particular geographic area for a specified period of time. While this initial version of House Bill 1633 is a good start, PAMED believes that revisions to the bill will be needed to achieve the nuanced outcome this complex issue demands.

The immense consolidation of health care systems in our Commonwealth has greatly increased the number of physicians employed by hospitals as opposed to physicians practicing independently. Routinely these employed health care practitioners are forced to sign employment agreements that contain the non-compete clauses, preventing a physicians' ability to deliver care within close proximity of their patients when their employment ends. These restrictive contracts are often unfair in both geography and duration, forcing patients to break long-term relationships with their physician and possibly jeopardize their ongoing care.

House Bill 1633, as introduced, would prohibit such restrictive covenants altogether. We would like to work with the General Assembly to advance a proposal that recognizes the difficulties employed physicians face when signing employment contracts by significantly diminishing the geographic reach and duration of time of a hospital or health system's restricted covenants. At the same time, the interest of small independent physician practices must be equally protected against predatory entities seeking to "poach" established community physicians from local medical practices.

PAMED understands that there are specific geographies around the state in which employers of health care practitioners are invested and need covenant constraints to continue to provide services in these communities while protecting their interests. Examples may include rural community hospitals or physician specialists who may otherwise not be locally available.

PAMED believes House Bill 1633 should be amended to effectively address when restrictive covenants should be prohibited and when their use is appropriate. This balanced approach must be fair to both employer and employee. We thank you for your consideration in supporting this effort with an affirmative vote on House Bill 1633 to move it along in the legislative process.

Please feel free to contact me should you have any questions or concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "Martin Raniowski". The signature is fluid and cursive, with the first name "Martin" being more prominent than the last name "Raniowski".

Martin Raniowski, MA, CAE, FCPP
Executive Vice President
Pennsylvania Medical Society



Pennsylvania

CHAPTER

February 28th, 2024

The Honorable Dan Frankel
Chairman
House Health Committee
326 Main Capitol Building
PO Box 202023
Harrisburg, PA 17120

The Honorable Kathy Rapp
Chairwoman
House Health Committee
312 Main Capitol
PO Box 202065
Harrisburg, PA 17120

RE: Support for HB 1633- Barring Non-Compete Agreements in Healthcare Employment

Dear Committee Chairs:

On behalf of the Pennsylvania Chapter of the American College of Cardiology (PaACC), and its 2,500 members plus countless patients, we would like to submit our strong support for Chairman Dan Frankel's HB 1633.

As you know, HB 1633 creates the Fair Contracting for Health Care Practitioners Act, which would effectively render non-compete agreements between employers and health care practitioners as void and unenforceable.

Non-compete agreements are contracts between an employer and an employee that prohibits the employee from competing with the business for a certain amount of time after employment has ended, allowing the employers to retain employees and maintain their market. Non-compete agreements in healthcare are a nationwide issue and nearly a dozen states, including California and Massachusetts, have passed legislation that fully bans or restricts non-compete agreements.

Our national leaders at the American College of Cardiology (ACC) submitted feedback on the Federal Trade Commission's 2023 proposed rulemaking to ban non-compete agreements. The ACC outlined that non-competes have become non-negotiable elements of contracts, especially in markets controlled by a few employers. Physicians typically cannot negotiate the geographic limits or time duration of non-competes. And health systems are often reluctant to create customized agreements with individual physicians, instead choosing more uniform contracts.

Concerns surrounding the geographic limits often arise when health systems have so many satellite locations that it becomes difficult, if not impossible, for a physician to seek new employment because each satellite location has a radius of practice restriction. To disentangle from the non-compete, a physician may have to relocate to a new state, obtain a new license and credentialing and liability insurance, etc. **From the physician's perspective, non-competes often stifle innovation, lead to higher rates of burnout, and create captive, toxic workplace cultures.**

But patients are also impacted and may report lower rates of satisfaction under health systems with non-competes. Physicians, who opt to move out of the health system and its non-competes, leave behind their patients. While the patients switch physicians, they may lose continuity of care, which can potentially negatively impact healthcare outcomes. Because of the

negative impacts of non-compete agreements on both physicians and their patients, the PaACC strongly supports HB 1633 and its ban of non-compete agreements.

In addition, we are aware that some states are entertaining non-compete based on salaries. Higher earners could be subject to a non-compete agreement, while lower earners might be absolved. **The PaACC does not believe a salary threshold of any kind should be set for several reasons.** First, we do not want to penalize the economic advancement of physicians at or near the threshold. Second, we do not want to restrict physicians from seeking alternative employment simply because of their current salary. Salaries are not the only reason an employee would seek alternative employment. They may be interested in different benefits, schedules, cultures, etc.

As a final point, PaACC acknowledges that employers may offer additional financial incentives to their employees as part of the contract terms. For example, a physician may be entitled to partial coverage of student loans, training, relocation costs, etc., if they remain employed by the health system for an established time frame. **If the physician did not complete the contract terms and left before the contract expired, we find it reasonable for an employer to recoup a prorated amount of money that can be directly correlated to expenses incurred by the employer.** However, we do not support exit fees that are not directly related to employer expenses.

While we eagerly await the FTC's Final Ruling on its proposed ban of non-compete agreements, we strongly urge the Pennsylvania House Health Committee to proactively deliberate HB 1633.

Thank you for your thoughtful consideration. We look forward to continued discussions on HB 1633.

Sincerely,

Dr. Ross Peterson, MD, MBA, FACC
President and Western Governor, PA Chapter of the American College of Cardiology

Dr. Srinath Adusumalli, MD, MSHP, MBMI, FACC
Vice President and Eastern Governor, PA Chapter of the American College of Cardiology

Dr. William Van Decker
National ACC Health Affairs Committee Chair

To: Members of the Pennsylvania House of Representatives Health Committee
Date: March 26, 2024
RE: Support for House Bill 1633 (Fair Contracting for Health Care Practitioners Act)

Thank you for the opportunity to comment on House Bill 1633, the Fair Contracting for Health Care Practitioners Act. Yearly, the Pennsylvania Health Access Network (PHAN) works with over 10,000 Pennsylvanians in roughly 62 of our 67 counties. One of the most common concerns we hear is that people with insurance coverage are unable to access the doctors they need in a timely way.

Because patients were waiting months - or even years - to see a specialist, PHAN worked with patients to document this in a quantitative and qualitative way in a new report: [Healthcare Networks Inadequate to Serve All: Causes and Solutions in Pennsylvania](#). PHAN found that:

- 2 in 5 participants reported waiting for an appointment for longer than 4 months;
- 1 in 10 reported waiting a year or more
- 1 in 3 reported travel times longer than 1 hour each way to appointments. Travel times were even longer for rural participants.
- Alarming, 1 in 5 said their condition had worsened due to a delay in accessing care.

House Bill 1633 provides one solution to increasing the number of health care professionals available to patients as well as offering more continuity of care for patients. Prohibiting non-compete agreements in the healthcare field is one measure that other states have already taken. In fact, non-competes are unenforceable, prohibited, or limited in 22 states: NH, MA, RI, CT, DE, WV, IN, TN, FL, AL, LO, TX, NM, OK, CO, SD, ND, UT, ID, OR, WA, CA.

Non-compete agreements in the Commonwealth can force health care workers to move significant distances, sometimes out of state, in order to continue practicing. This has been intensified by the rapid hospital market consolidation over the past 10 years. Single dominant hospital systems can virtually preclude a provider for working in entire regions of the state. Ultimately, patients lose access to health care, and usually with no notice to the patient. This leads to a loss of continuity of care for the patient and fewer available healthcare professionals in an area, only exacerbating the issues of network adequacy cited in our report.

The impacts of these non-compete agreements are also felt in local communities as members of the community are forced to relocate in search of a new job, leaving Little League teams without coaches and scout troops without leaders. Anti-compete clauses hurt patients, workers, families and communities.

Please reach out to Erin Gabriel with any questions at erin@pahealthaccess.org or 717-820-2239.



The Hospital + Healthsystem
Association of Pennsylvania

Leading for Better Health

March 21, 2024

The Honorable Dan Frankel
Chair, House Health Committee
The Pennsylvania House of Representatives
P.O. Box 202023
Harrisburg, PA 17120-2023

The Honorable Kathy L. Rapp
Minority Chair, House Health Committee
The Pennsylvania House of Representatives
P.O. Box 202065
Harrisburg, PA 17120-2065

Dear Chairman Frankel, Chairwoman Rapp, and Members of the House Health Committee:

On behalf of more than 230 members statewide, The Hospital and Healthsystem Association of Pennsylvania (HAP) writes to strongly oppose House Bill 1633 PN 1960, which proposes banning new, and nullifying upon license renewal any existing, restrictive covenants (“non-compete agreements”) between health care practitioners and the primary health care facilities and offices that employ them. The measure also requires those who employ health care practitioners to notify patients when a practitioner leaves employment, where they will render future services, and how to continue as their patient.

We appreciate the patient-focused intent of this legislation—to assure continuity of care—and are also deeply committed to that concept. As proposed, however, the non-compete prohibition and nullification provisions are not appropriate, and the notification obligation is not workable.

A non-compete agreement is an essential element of consideration for a sophisticated and highly compensated professional as they assess an offer for potential employment. Courts already review non-compete agreements for reasonableness and skeptically construe language that restricts the rights of employees. A non-compete agreement also may, for example, be deemed by the courts to be unenforceable if found to be unduly restrictive or an impediment to patients’ access to care.

As a practical matter, restrictive covenants are most typically used in health care settings with the highest level of providers, such as physicians. Such providers are in extremely high demand; if they do not choose to sign a restrictive covenant, they need not do so.

In addition to cash compensation and signing bonuses, hospitals and health systems make significant investments to recruit, establish, and retain staff doctors by obtaining liability coverage, securing a wide array of credentials, and facilitating extensive training activities. Health care employers also frequently cover moving expenses and/or pay student loan debt, for example. Hospitals and health systems often cover physicians’ salaries even before they start seeing patients or are approved for reimbursement by public and private payors.

Pennsylvania is already struggling with a shortage of providers in the health care workforce, particularly in rural areas, and this legislation may exacerbate the problem. It takes considerable time and resources to find, hire, train, and establish a doctor in patient practice.

Agreements that are evaluated by both parties and signed before accepting an offer of employment protect the investments made to attract these highly skilled individuals and, in turn, provide reliability, as well as protect access to care for patients and communities they serve. Eliminating non-compete agreements may



Chairman Frankel, Chairwoman Rapp
Oppose HB 1633
March 21, 2024

unintentionally create an environment in which providers can hop between health systems at any interval for any reason, triggering 'bidding wars' for practitioners, increasing health care costs, and decreasing access to care.

House Bill 1633's nullification of covenants entered into or amended prior to the effective date of the legislation upon renewal of the provider's license, registration, or certification may, arguably, be challenged as inappropriate government interference in private contracts.

Like the non-compete prohibitions, the notification provisions do not reflect the complexity of the health care space.

Just as with any employer, people leave their positions for a myriad of personal and professional reasons. Some providers who leave employment do not share their future plans or contact information with their previous employers. Even when they do, some choose to leave their previous fields of practice or move out of the state. Even if remaining in practice locally, it may not be suitable for practitioners to treat past patients for any number of reasons, not the least of which may be participation in the patient's insurance network.

It is also important to think about the patient who would be notified. It may be extremely confusing to receive notices related to a provider that they have not seen in years, had seen only a handful of times, had seen for specialty care that is no longer relevant, had terminated a relationship with, or dozens of other possible real-world scenarios.

Finally—and I believe we would all agree—by far the most important consideration: There are any number of scenarios in which unsolicited and unexpected contact from a health care provider has the potential to cause patient harm. As you know, there are complex requirements safeguarding health information. *This is for good reason.* Imagine one scenario, for example, in which a notification is sent to a home address that contains a specific provider name or specialty that the patient needs to keep confidential.

We urge you to vote against House Bill 1633, in part, because of the very real possibility of triggering unintended negative consequences without achieving the intended positive outcomes of the proposal.

The hospital community stands ready to work with you and your legislative colleagues to increase the number of well-trained professionals to provide high-quality care to every Pennsylvanian in every community across the state. If you have any questions, comments, or concerns, please contact me at HTyler@HAPonline.org or (717) 433-1997.

Sincerely,

Heather Tyler
Vice President, State Legislative Advocacy